

**COMMERCIAL PROPERTY ASSESSED
CLEAN ENERGY ("C-PACE") AGREEMENT**

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2015, by and between **TOWN OF EASTON, CONNECTICUT**, a municipal corporation organized and existing under the laws of the State of Connecticut (the "Municipality"), and the **CONNECTICUT GREEN BANK**, a quasi-public agency of the State of Connecticut, having its business address at 845 Brook Street, Rocky Hill, Connecticut 06067 (the "Green Bank").

RECITALS

WHEREAS, Commercial Property Assessed Clean Energy ("C-PACE") is a program to facilitate loan financing for clean energy improvements to commercial properties by utilizing a state or local assessment mechanism to provide security for repayment of the loans.

WHEREAS, section 16a-40g, as amended, of the Connecticut General Statutes (the "Act") established the C-PACE program in Connecticut.

WHEREAS, subsection (b)(1) of the Act directs the Green Bank to establish a commercial sustainable energy program, and authorized the Green Bank to make appropriations for and issue bonds, notes or other obligations to finance the program costs. A commercial sustainable energy program is a program that facilitates energy improvements to commercial or industrial property and utilizes municipal benefit assessments authorized by the Act as security for financing the energy improvements.

WHEREAS, to secure financing for the program, the Green Bank and the Municipality are authorized to enter into a written agreement, as approved by the Municipality's legislative body, pursuant to which the Municipality has agreed to assess, collect, remit and assign, benefit assessments to the Green Bank in return for energy improvements for benefited property owners within the Municipality and for costs reasonably incurred by the Municipality in performing such duties.

WHEREAS, this Agreement constitutes the written agreement authorized by the Act.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the Act, it is hereby agreed as follows:

Section 1 - Definitions.

- (a) "Energy improvements" means (A) participation in a district heating and cooling system by qualifying commercial real property, (B) participation in a microgrid, as defined in section 16-243y, including any related infrastructure for such microgrid, by qualifying commercial real property, provided such microgrid and any related infrastructure incorporate clean energy, as defined in section 16-245n, as amended by this act, (C) any renovation or retrofitting of qualifying commercial real property to reduce energy consumption, (D) installation of a renewable energy system to service qualifying commercial real property, or (E) installation of a solar thermal or geothermal system to service qualifying commercial real property, provided such renovation, retrofit or installation described in subparagraph (C), (D) or (E) of this subdivision is permanently fixed to such qualifying commercial real property.

- (b) "District heating and cooling system" means a local system consisting of a pipeline or network providing hot water, chilled water or steam from one or more sources to multiple buildings.
- (c) "Qualifying commercial real property" means any commercial or industrial property, regardless of ownership, that meets the qualifications established for the commercial sustainable energy program.
- (d) "Commercial or industrial property" means any real property other than a residential dwelling containing less than five dwelling units.
- (e) "Benefited property owner" means an owner of qualifying commercial real property who desires to install energy improvements and provides free and willing consent to the benefit assessment against the qualifying commercial real property.
- (f) "Commercial sustainable energy program" means a program that facilitates energy improvements and utilizes the benefit assessments authorized by this Agreement as security for the financing of the energy improvements.
- (g) "Benefit assessment" means the assessment authorized by the Act.

Section 2 - Obligations of the Green Bank.

- (a) Program Requirements. Pursuant to the Act, the Green Bank:

- (1) Shall develop program guidelines governing the terms and conditions under which state financing may be made available to the commercial sustainable energy program, including, in consultation with representatives from the banking industry, municipalities and property owners, developing the parameters for consent by existing mortgage holders and may serve as an aggregating entity for the purpose of securing state or private third-party financing for energy improvements pursuant to the Act;

- (2) Shall receive and review applications submitted by benefitted property owners within the Municipality for financing of energy improvements, and approve or disapprove such applications in accordance with underwriting procedures and requirements established by the Green Bank;

- (3) Shall prepare and deliver to the Municipality an annual report which shall contain information related to each qualifying commercial real property within the Municipality, including:

- i. A list of each qualifying commercial real property for which the benefitted property owner executed a financing agreement during the prior year;
 - ii. A list of each qualifying commercial real property where all obligations under the financing agreement have been satisfied or paid in full during the prior year, including the satisfaction date and a copy of the notice of satisfaction;
 - iii. The total benefit assessment payments made to the Green Bank in respect of all qualifying commercial real properties; and

- iv. For each non-satisfied (not paid in full) benefit assessment (including each benefit assessment approved in the prior year):
 - A. The date of the financing agreement;
 - B. The outstanding amount of the financing;
 - C. The total principal balance and accrued interest outstanding; and
 - D. The annual payment(s) due to the Green Bank (which shall include principal and accrued interest) associated with such benefit assessment (including the amount of accrued interest on the initial payment, if different).

(4) Shall establish the position of commercial sustainable energy program liaison within the Green Bank;

(5) Shall establish a loan loss reserve or other credit enhancement program for qualifying commercial real property;

(6) May use the services of one or more private, public or quasi-public third-party administrators to administer, provide support or obtain financing for the commercial sustainable energy program; and

(7) Shall adopt standards to ensure that the energy cost savings of the energy improvements over the useful life of such improvements exceed the costs of such improvements.

(b) Project Requirements. If a benefitted property owner requests financing from the Green Bank for energy improvements under the Act, the Green Bank shall:

(1) Require performance of an energy audit or renewable energy system feasibility analysis on the qualifying commercial real property that assesses the expected energy cost savings of the energy improvements over the useful life of such improvements before approving such financing;

(2) Impose requirements and criteria to ensure that the proposed energy improvements are consistent with the purpose of the commercial sustainable energy program; and

(3) Require that the property owner obtain the consent of any existing mortgage holder of such property, prior to the execution of the financing agreement or the recording of any lien securing a benefit assessment for energy improvements for such property, to have a Benefit Assessment Lien levied on the property to finance such energy improvements pursuant to the Act.

(c) Financing Agreement for Project. The Green Bank may enter into a financing agreement with the property owner of qualifying commercial real property (the "Financing Agreement"). The Financing Agreement shall clearly state the estimated benefit assessment that will be levied against the qualifying commercial real property. The Green Bank shall disclose to the property owner the costs and risks associated with participating in the commercial sustainable energy program, including risks related to the failure of the property owner to pay the benefit assessment

provided for in the Financing Agreement. The Green Bank shall disclose to the property owner the effective interest rate on the benefit assessment, including fees charged by the Green Bank to administer the commercial sustainable energy program, and the risks associated with variable interest rate financing, if applicable. The Green Bank shall notify the property owner that such owner may rescind any Financing Agreement entered into not later than three business days after such Financing Agreement is executed by the property owner and delivered to the Green Bank. The Financing Agreement shall provide for the consent of existing mortgage holders for the Benefit Assessment Lien to be continued, recorded and released by the Municipality, as required by the Act and described in Section 3(c) herein.

(d) Determination of Estimated and Final Benefit Assessments and Payments.

(1) Upon execution of the Financing Agreement, the Green Bank shall determine the total benefit assessment amount, including fees charged by the Green Bank to administer the commercial sustainable energy program, and shall set a fixed or variable rate of interest for the repayment of the benefit assessment amount. Such interest rate, as may be supplemented with state or federal funding as may become available, shall be sufficient to pay the financing and administrative costs of the commercial sustainable energy program, including delinquencies. The Green Bank shall provide written notice of the total benefit assessment amount and interest rate to the Municipality.

(2) It is anticipated that the Green Bank will decide that the benefit assessment shall be payable in two equal payments respectively payable on July 1 and January 1 of each year so that they are due at the same time as the installments of the Municipality's real property taxes. If the Municipality changes its practices concerning the billing of annual real property taxes as to the number of installments and their due dates, the Green Bank will change its practices to the extent possible to correspond with the Municipality's practices.

Section 3 - Obligations of the Municipality.

(a) Levy of Benefit Assessment. Upon receiving written notice from the Green Bank of the benefit assessment as provided in Section 2(d)(1) herein, the Municipality shall promptly levy the benefit assessment against the qualifying commercial real property to be benefited by the energy improvements financed by the Green Bank and described in the Financing Agreement, and shall place a lien on the qualifying commercial real property to secure payment of the benefit assessment in the form of the attached Exhibit A ("Benefit Assessment Lien"). The Benefit Assessment Lien will have two attachments: (1) the legal description of the benefited property and (2) the Financing Agreement payment schedule provided by the Green Bank. As provided in the Act, the benefit assessments levied pursuant to this Agreement and the interest, fees and any penalties thereon shall constitute a lien against the qualifying commercial real property on which they are made until they are paid. The Green Bank will reimburse the Municipality the cost charged by the Town Clerk for recording the Benefit Assessment Lien. Such Benefit Assessment Lien shall be levied and collected in the same manner as the property taxes of the Municipality on real property, including, in the event of default or delinquency, with respect to any penalties, fees and remedies and lien priorities as provided by the Act.

(b) Continuation, Recording and Release of Lien. As provided in the Act, each Benefit Assessment Lien shall be continued, recorded and released in the manner provided for property tax liens, subject to the consent of existing mortgage holders, and shall take precedence over all other liens

or encumbrances except a lien for taxes of the Municipality on real property, which lien for taxes shall have priority over such Benefit Assessment Lien. The Green Bank shall provide to the Municipality written notice of the consent of existing mortgage holders for the lien to be continued, recorded and released by the Municipality.

(c) Assignment of Benefit Assessment Lien.

(1) Upon the written request of the Green Bank, the Municipality shall assign, in the form of the attached Exhibit B, to the Green Bank any and all Benefit Assessment Liens filed by the Municipality's tax collector, as provided in this Agreement. The Green Bank may sell or assign, for consideration, any and all Benefit Assessment Liens received from the Municipality. The assignee or assignees of such Benefit Assessment Liens shall have and possess the same powers and rights at law or in equity as the Green Bank and the Municipality and its tax collector would have had if the Benefit Assessment Lien had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection. The assignee shall have the same rights to enforce such Benefit Assessment Liens as any private party holding a lien on real property, including, but not limited to, foreclosure and a suit on the debt. Costs and reasonable attorneys' fees incurred by the assignee as a result of any foreclosure action or other legal proceeding brought pursuant to the assignment and directly related to the proceeding shall be taxed in any such proceeding against each person having title to any property subject to the proceedings. Such costs and fees may be collected by the assignee at any time after demand for payment has been made by the assignee.

(2) The Municipality hereby acknowledges that the Green Bank may sell or assign any and all Benefit Assessment Liens received from the Municipality under Section 3(c) of this Agreement to a trustee for the benefit of the holders of the Green Bank's bonds, notes or other obligations issued to finance the costs of the commercial sustainable energy program, and that the holders of the Green Bank's bonds, notes or other obligations will rely on the Municipality to levy, collect and remit the benefit assessments to the Green Bank. Therefore, the Municipality unconditionally agrees that in the event the Municipality does not discharge its duties under this Agreement, the trustee shall have the right to enforce the Municipality's obligations under this Agreement by institution of legal action against the Municipality.

(d) Amendment of the Benefit Assessment Lien. Pursuant to the Financing Agreement, the final amount of the benefit assessment may be adjusted after the levy of the Benefit Assessment Lien. Such an adjustment would likely be the result of a change in the energy improvement service contract amount during the construction period, a change in the amount of capitalized interest, or an amendment to the Financing Agreement. In the event that the final benefit assessment amount needs to be adjusted at the completion of the project, or any other time, the Green Bank will inform the Municipality of such change, provide the Municipality with an updated payment schedule and new lien amount, and the Municipality shall amend the Benefit Assessment Lien to reflect such adjustment. The Green Bank will reimburse the Municipality the cost charged by the Town Clerk for amending the Benefit Assessment Lien.

(e) Billing and Collection; Payment to the Green Bank.

(1) The Municipality shall bill the benefit assessments in the same manner and at the same time as it bills its real property taxes. The benefit assessment payments shall be a separate clearly defined line item or separate bill and shall be due on the same dates as the Municipality's

real property taxes. The amount of the benefit assessment will be recorded on the Municipality's tax rolls in the same manner as any other benefit assessment, such that the public will have access to its existence and payment status. The penalties and interest on delinquent benefit assessments shall be charged in the same manner and rate as the Municipality charges for delinquent real property taxes.

(2) Payments of the benefit assessments collected by the Municipality shall be segregated from all other funds of the Municipality and deposited in a separate account for the benefit of the Green Bank and identifying the Green Bank as the beneficial owner. The Municipality disclaims any ownership interest or other interests in such account or the amount collected.

(3) The Municipality shall pay all amounts collected with respect to the benefit assessments within any calendar month to the Green Bank or its assignee no later than thirty days after the month that the amounts are collected. The Municipality will provide collection reports to the Green Bank, and the Green Bank, at its own expense, shall have the right to audit the records relating to the benefit assessments upon reasonable notice at reasonable times. The Green Bank and Municipality agree to provide each other with such reasonable information as they may request and the Green Bank and the Municipality agree to provide such information in a computer format satisfactory to the other.

(f) Collection of Delinquent Payments.

(1) In the event that any benefited property owner fails to make a benefit assessment payment pursuant to the payment schedule of the Benefit Assessment Lien in any property tax billing cycle, the Municipality shall provide written notice to the Green Bank of such delinquency in a reasonably timely manner. After providing such notice to the Green Bank, the Municipality has no obligation to collect delinquent benefit assessment payments unless it enters into a separate agreement with the Green Bank described in the following subsection (2).

(2) If the Green Bank makes a written request to the Municipality for its assistance in the collection of delinquent benefit assessments and related charges, the Municipality, in its sole discretion, and the Green Bank may enter into a separate agreement for those services, which agreement shall provide for compensation to be paid to the Municipality for its collection services. The agreement may provide for the Municipality to pursue the collection of any delinquent benefit assessments with the same diligence it employs in the collection of the Municipality's real property taxes, including the commencement of foreclosure proceedings to the extent provided by the then-current statutes of the State of Connecticut, and to take such actions that are required to preserve the Benefit Assessment Lien securing the delinquent benefit assessments. The agreement may also provide that the Green Bank shall have the right to take over the enforcement of any delinquent benefit assessments upon written notice to the Municipality, and thereupon the Municipality will have no further responsibility to collect such amount.

(3) The Municipality will provide written notice to the Green Bank of any sale or assignment of its real property taxes or any institution of a judicial foreclosure or other proceeding against any real property for delinquent real property taxes if such real property is subject to a lien securing a delinquent benefit assessment. Similarly, the Green Bank shall

provide written notice to the Municipality of the institution of a judicial foreclosure or other proceeding against any qualified commercial real property for a delinquent benefit assessment.

(g) Promotion of Program; Assistance for Green Bank Financing; Payment to Municipality.

(1) The Municipality shall use good faith efforts to assist the Green Bank in local marketing efforts and outreach to the local business community to encourage participation in the commercial sustainable energy program, such as including commercial sustainable energy program information on the Municipality's website, distributing an informational letter from chief elected official to local businesses regarding the program, and conducting one or more business roundtable event(s).

(2) The Municipality shall use good faith efforts to assist in gathering and providing information for the Green Bank to offer, sell and issue its bonds, notes or other obligations to provide funds for the commercial sustainable energy program.

(3) The Green Bank agrees to pay the Municipality annually a fee of \$500 (the "Annual Fee") for its services hereunder. In the event such payment is not sufficient to cover the Municipality's out of pocket costs and expenses in discharging its duties hereunder, the Green Bank shall reimburse the Municipality for its actual reasonable costs and expenses associated with the collection and enforcement of the benefit assessments in excess of the Annual Fee. Such costs and expenses include reasonable costs incurred by the Municipality in conjunction with any and all proceedings to collect and enforce the benefit assessments and delinquent benefit assessments, including foreclosure proceedings.

Section 4 - Indemnification.

The Green Bank agrees that it will protect, defend, indemnify and hold harmless the Municipality and its officers, agents and employees to the extent of available proceeds derived from the benefit assessments from and against all claims, demands, causes of action, damages, judgments, losses and expenses, including reasonable attorney's fees, arising out of or in connection with the actions of the Green Bank's officers, employees and agents under this Agreement. This provision shall survive termination of this Agreement.

Section 5 - Term.

The term of this Agreement shall commence upon the date first written above. This Agreement shall be in full force and effect until all of the benefit assessments have been paid in full or deemed no longer outstanding. The Municipality may opt-out of continuation in the program at any time on sixty (60) days advance notice to the Green Bank, provided that the provisions of this Agreement shall continue with regard to benefit assessments assessed prior to such termination date until those benefit assessments have been paid in full or are no longer outstanding.

Section 6 - Default.

Each party shall give the other party written notice of any breach of any covenant or agreement under this Agreement and shall allow the defaulting party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within the 30 days, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to

thereafter notify the other party of the actual cure of any such default. The parties shall have all other rights and remedies provided by law, including, but not limited to, specific performance, provided however, in no event shall either party have the right to terminate this Agreement prior to the expiration of the Term, except as provided in accordance with Section 7(c) of this Agreement.

Section 7 - Miscellaneous Provisions.

- (a) Assignment or Transfer. Except as provided in Section 3(c) hereof, a party may not assign or transfer its rights or obligations under this Agreement to another unit of local government, political subdivision or agency of the State of Connecticut or to a private party or entity without the prior written consent of the other party and, if required, the prior approval of the holders of the Green Bank's bonds, notes or other obligations. If approval of the assignment by the holders of the Green Bank's bonds, notes or other obligations is required, such approval shall be obtained in accordance with the indenture or other documents entered into by the Green Bank in connection with the bonds, notes or other obligations.
- (b) Amendment and Termination. After the Green Bank sells and issues its bonds, notes or other obligations to finance the costs of the commercial sustainable energy program, this Agreement may not be amended or terminated by the parties without the prior approval of the holders of the Green Bank's bonds, notes or other obligations, which approval shall be obtained in accordance with the indenture or other documents entered into by the Green Bank in connection with the bonds, notes or other obligations.
- (c) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.
- (d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.
- (e) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the Municipality:

Town of Easton
225 Center Road
Easton, Connecticut 06612
Attention: First Selectman

If to the Green Bank:

Connecticut Green Bank
845 Brook Street
Rocky Hill, Connecticut 06067
Attention: President

- (g) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed to by the Green Bank and the Municipality.
- (h) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the State of Connecticut. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the State of Connecticut.
- (i) Entire Agreement. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.
- (j) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

IN WITNESS WHEREOF, the Municipality and the Green Bank have each caused this Agreement to be executed and delivered as of the date indicated above:

(SEAL)

ATTEST:

TOWN OF EASTON

_____ By: _____
Adam Dunsby, First Selectman

CONNECTICUT GREEN BANK

By: _____
Bryan T. Garcia, President

EXHIBIT A

CERTIFICATE OF LEVY AND LIEN OF BENEFIT ASSESSMENT

The undersigned Tax Collector of the City/Town of _____, Connecticut ("Municipality"), with an office at _____, _____, Connecticut, for and of behalf of the Connecticut Green Bank ("Green Bank"), with an office at 845 Brook Street, Rocky Hill, Connecticut 06067, pursuant to the Commercial Property Assessed Clean Energy Program established under Connecticut General Statutes Section 16a-40g, as amended (the "Act"), and the Municipal Agreement between the Municipality and Green Bank dated _____, 20____, HEREBY LEVIES A BENEFIT ASSESSMENT AGAINST AND LIEN UPON certain real property as described more particularly in the attached **Exhibit A** (the "Property") of the Finance Agreement and also commonly referred to as _____, situated in the Municipality and owned on the date hereof in whole or in part by _____ (the "Property Owner") for energy improvements made or to be made to the Property. The amount and repayment of said levy and lien, as determined by Green Bank and provided to Municipality, are as follows: an installment payment plan is in effect for payment of the benefit assessment, and is based on the principal amount of the benefit assessment of \$ _____, with interest thereon at a fixed rate equal to _____% per annum, with equal installments of principal and interest due and payable, all as set forth in the attached **Exhibit H** of the Finance Agreement. In the event that any such installment shall remain unpaid for thirty days after the same shall become due and payable, interest and other charges shall be charged upon the unpaid installment(s) at the rate of 18% per annum, as provided by the Act and by law. At such time as the principal and interest payments of the benefit assessment have been satisfied and paid in full, a release of this Certificate shall be filed in the Land Records of the Municipality evidencing such release.

This Certificate constitutes a certificate of lien and is filed pursuant to the provisions of the Act to evidence a lien for the benefit assessment levied upon the Property for the special benefits conferred upon said Property by the renovation or retrofitting for energy improvements related thereto. Pursuant to the Act, this lien shall take precedence over all other liens or encumbrances except a lien for taxes of the Municipality on real property, which lien for taxes shall have priority over this lien.

The portion of this Certificate which constitutes a levy of benefit assessment and notice of installment payment of benefit assessments is filed pursuant to the provisions of the Act and the Connecticut General Statutes, as amended.

By order of the Tax Collector of the City/Town of _____.

Dated at _____, Connecticut this _____ day of _____, 20__.

Tax Collector

Received for Record: _____, 20__ at _____ A.M./P.M.

Recorded in the _____ Land Records at Volume _____, Page _____

City/Town Clerk

